IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.Rev.Pet.No. 485 of 2000()

SC.103/1994 of SESSIONS COURT, THRISSUR
CRA.16/1998 of ADDL. SESSIONS COURT, THRISSUR

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REVN. PETITIONER(S):

RAVI,
S/O.CHULLIPARAMBIL KUTTAN,
KOODAPPUZHA, KIZHAKKE CHALAKUDY VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT(S):

STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI. C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COUT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.485 of 2000

Dated this the 23rd day of March, 2007

O R D E R

Revision petitioner was convicted and sentenced under Section 304-B of the Indian Penal Code ('IPC', for short) to undergo simple imprisonment for seven years. The conviction and sentence were entered by the Assistant Sessions Judge who tried the case and thereafter it was confirmed by the Sessions Court.

2.According to the prosecution, the deceased Sini committed suicide by consuming poison and this happened within seven years of marriage of the deceased with the accused. It is also the case of prosecution that deceased Sini was harassed and treated cruelly by her husband who is the revision petitioner herein, soon before her death, in connection with demanding dowry which was agreed to be paid within six months from the date of marriage. The harassment started from the second day of the marriage itself and the deceased Sini was sent back to her parental house from where she committed suicide.

3. After analysing the evidence adduced by the prosecution and on hearing both sides, both courts found that the offence under Section 304-B IPC is proved against the accused. But learned counsel for the revision petitioner submitted that the court committed illegality in not following the procedure laid down in Sections 232 and 233 of the Code of Criminal Procedure ('the Code', for short) and hence the conviction and sentence passed against the revision petitioner cannot be sustained. He has placed reliance upon the decisions reported in Sivamani v. State of Kerala (1992(2) KLT 227), Chandran v. State of Kerala [2005(4) KTL 962] and Dinesh Kumar v. State of Haryana [2006 (4) KLT SN 49] in support of his arguments.

4. On going through the records, particularly the proceeding sheet and the questioning of the accused conducted under Section 313 Cr.P.C., I find that the trial court has not followed the procedure under Section 232 of the Code. Under the said provision, the accused has a right of hearing. This has been denied to the accused. The proceeding sheet would show that the accused was not heard nor was he or prosecution heard before the accused was called upon to enter on his defence. As per Section 232 of the Code, if after taking the evidence for the

prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal. The hearing of the accused and the prosecution is thus necessary under Section 232 of the Code. It is well settled that the hearing of the prosecution and the defence is a must under Section 232 of the Code but the proceedings sheet and the records show that there was compliance of Section 232 of the Code.

5. In the light of the decisions cited above by learned counsel for the revision petitioner, t he conviction and sentence have to be set aside. The court is bound to proceed with the case after compliance of the requirements under Sections 232 and 233 of the Code as laid down in the said decisions. In such circumstances, I am not going into the merits of the case.

In the result, the conviction and sentence passed against the revision petitioner are set aside. The case is remanded to the trial court for fresh consideration and disposal in accordance with law. The parties shall appear before the trial court on receipt of notice to their counsel from the trial court.

The Revision Petition is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.485 of 2000

Dated this the 23rd day of March, 2007

O R D E R